**THE HONOURABLE SRI JUSTICE N.V.RAMANA**

**WRIT PETITION No. 25255 of 2003.**

**DATED: 23-11-2006**

Between:

Butti Rajuamma.

…Petitioner

and

Senior Regional Manager,
Food Corporation of India,
Regional Office,
Hyderabad and others.

…Respondents.

**THE HON'BLE SRI JUSTICE N.V.RAMANA**

**W.P. No. 25255 of 2003**

**Oral order:**

The petitioner claims that she is the sister of one B. Ramachandram, who while working with the respondents died on 17-4-2003, leaving behind her as his sole legal heir. The petitioner states that her brother nominated her to receive the gratuity and other benefits. The petitioner states that she being the nominee and sole legal heir of her brother, is entitled to claim his gratuity and other benefits. Therefore, as required she submitted the necessary form on 20.08.2003 to the 1st and 2nd respondents with a request to release the gratuity and other benefits in her favour. While so, the 3rd respondent claiming that she is the legally wedded wife of B. Ramachandran, and she and her two children alone, being his legal heirs, are entitled to the gratuity and other benefits, made a representation to the respondents. The petitioner states that the 3rd respondent deserted his brother long ago, and she being the legal heir, alone is entitled to release of the gratuity and other benefits in her favour.

A counter-affidavit is filed by the 1st respondent *inter alia* alleging that the deceased married the 3rd respondent and was blessed with two male children. The 3rd respondent made a claim for withdrawal of DCRG and pensionary benefits before the 1st and 2nd respondents. The petitioner also made a rival claim contending that she being the legal heir, is entitled to the gratuity and other benefits. In view of the rival claims, the respondents directed both the petitioner as well as the

3rd respondent to obtain Succession Certificate from the competent authority.

The petitioner did not submit any legal heir certificate, while the 3rd respondent submitted legal heir certificate showing herself to be the wife of B. Ramachandran and having two sons through him. On examination of the legal heir certificate, produced by the 3rd respondent, she was advised to submit Succession Certificate, and she is yet to submit.

It is submitted that in view of rival claim, the benefits of the deceased employee are kept pending without being released in anybody's favour.

Heard the learned counsel for the petitioner and the learned counsel for the official respondents.

Though the petitioner contends that she being the nominee of her brother and sole legal, is entitled to release of his gratuity and other benefits, the fact remains, the 3rd respondent, who is claiming to be the wife of the brother of the petitioner, also made a claim that she being the legal heir, she and her two sons are entitled to receive the gratuity and other benefits of the deceased. The petitioner except claiming that she is the legal heir, is said to have not produced the legal heir certificate, while the 3rd respondent is said to have produced the legal heir certificate, and upon perusing the same, they have advised her to produce Succession Certificate.

Under Section 2(h) of the Payment of Gratuity Act, 1972, the word "family" in relation to an employee, shall be deemed to consist of (i) in the case of a male employee, himself, his wife, his children, whether married or unmarried, his dependent parents and the dependent parents of his wife and the widow and children of his predeceased son, if any.

The petitioner, admittedly, is the sister of the deceased, while the 3rd respondent, is said to be the wife of the deceased, through

whom she got two children shall be deemed to constitute family of the deceased. Since the brother of the petitioner is a married person, the 3rd respondent, namely his wife and two children constitute family as per the definition of "family", defined in Section 2(h) of the Payment of Gratuity Act, 1972.

Under Section 6(3) of the Payment of Gratuity Act, 1972, if an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void. Since the petitioner's brother is said to be a married person, having married the 3rd respondent, the nomination made by the brother of the petitioner in her favour, having regard to the provisions of Section 6(3) of the Payment of Gratuity Act, 1972 shall be void for the petitioner does not constitute part of the "family" of the deceased.

In the above view of the matter, no exception can be taken to the action of the respondents in not releasing gratuity and other benefits in favour of the petitioner, and on the other hand, advising the 3rd respondent to produce Succession Certificate for claiming the gratuity of the deceased.

The writ petition is devoid of merit, and the same is accordingly dismissed. No costs.

**N.V.RAMANA, J**

23rd November, 2006.
GRR

**THE HONOURABLE SRI JUSTICE N.V.RAMANA**

–
–
–
–
–
–
–
–
–
–
–
–
–
–
–
–
–

**WRIT PETITION No. 25255 of 2003.**

**DATED: 23-11-2006**